

R590. Insurance, Administration.

R590-186. Bail Bond Surety Business. (Effective 3-26-2014)

R590-186-1. Purpose.

This rule establishes uniform criteria and procedures for the initial and renewal licensing, of a bail bond surety company, and sets standards of conduct for those in the bail bond surety business in the State of Utah.

R590-186-2. Authority.

This rule is promulgated pursuant to:

(1) Section 31A-35-104 which requires the commissioner to adopt by rule specific licensure, and certification guidelines and standards of conduct for the bail bond business;

(2) Subsection 31A-35-301(1) which authorizes the commissioner to adopt rules necessary to administer Chapter 35 of Title 31A;

(3) Subsection 31A-35-401(1)(c) which allows the commissioner to adopt rules governing the granting of licenses for bail bond surety companies;

(4) Subsection 31A-35-401(2) which allows the commissioner to require by rule additional information from bail bond applicants applying for licensure;

(5) Subsection 31A-35-406(1)(b) which allows the commissioner to establish by rule the annual renewal date for the renewal of a license as a bail bond surety company.

R590-186-3. Scope and Applicability.

This rule applies to any person engaged in the bail bond surety business.

R590-186-4. Initial Company License.

(1) Persons desiring to become licensed as bail bond surety companies shall file with the Bail Bond Surety Oversight Board (Board) a bail bond company application which can be obtained from the Insurance Department.

(2) The applicant shall pay the annual license fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide at least one of the following:

(a) If the applicant relies on a letter of credit as the basis for issuing a bail bond, the applicant shall provide an irrevocable letter of credit with a minimum face value of \$300,000 assigned to the State of Utah from an entity qualified by state or federal regulators to do business as a financial institution in the state of Utah.

(b) If the applicant relies on the ownership of real or personal property located in Utah as the basis for issuing bail bonds, the applicant shall provide a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year. The financial statement must show a net worth of at least \$300,000, including a minimum of \$100,000 in liquid assets. The applicant shall also provide a copy of the applicant's federal income tax returns for the prior two years and, for each parcel of real property owned by the applicant and included in the applicant's net worth calculation, a preliminary title report dated not more than one month prior to

the date of the application and an appraisal dated not more than two years prior to the date of the application.

(c) If the applicant relies on their status as the agent of a bail bond surety insurer as the basis for issuing bail bonds, the applicant shall provide a Qualifying Power of Attorney issued by the bail bond surety insurer.

(3) Applications approved by the Board will be forwarded to the insurance commissioner for the issuance of a license.

(4) Applications disapproved by the Board may be appealed to the insurance commissioner within 15 days of mailing the notice of disapproval.

(5) When a bail bond surety pledges the assets of a letter of credit under 31A-35-404(1), the letter of credit must:

(a) be drawn on a Utah depository institution;

(b) be assigned to the state and its political subdivisions to guarantee the payment of a bail bond forfeiture; and

(c) be drawn upon by the holder of the judgment of a bail bond forfeiture, which remains unpaid 60 days following the suspension of the bail bond surety licensed under 31A-35-504.

R590-186-5. Company License Renewal.

A licensed bail bond surety company shall renew its license on or before July 15 of each year by meeting the following requirements:

(1) file with the insurance commissioner a renewal application, pay the required renewal licensing fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide the additional information described in this section.

(2) If the applicant relies on the ownership of real or personal property as the financial basis for issuing bail bonds the applicant must include the following with the renewal:

(a) a statement that no material changes have occurred negatively affecting the property's title, including any liens or encumbrances that have occurred since the last license renewal;

(b) a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year showing a net worth of at least \$300,000, at least \$100,000 of which must consist of liquid assets and a copy of the applicant's federal income tax return for the prior year; and

(c) the following items are required as indicated:

(i) renewal in 2002, 2008, and 2014: a preliminary title report dated not more than one month prior to the date of the renewal application for each parcel of real property owned by the applicant and included in the applicant's net worth calculation; or

(ii) renewal in 2005, 2011, and 2017: a preliminary title report and a current appraisal dated not more than one month prior to the date of the renewal application for each parcel of real property owned by the applicant and included in the applicant's net worth calculation.

(3) Renewal applicants who were licensed as a bail bond surety company prior to December 31, 1999, may opt to apply under the lower limits in effect at that date.

(a) For renewal applicants relying on a letter of credit as the financial basis for issuing bail bonds, the amount is reduced to \$250,000.

(b) For renewal applicants relying on real or personal property as the basis for issuing bail bonds, the amount is reduced to a net worth of at least \$250,000, at least \$50,000 of which must consist of liquid assets.

(c) Renewal applicants opting for lower limits are limited to the 5 to 1 ratio of outstanding bond obligations as shown in R590-186-9.

(4) When using a letter of credit at renewal the bail bond surety must follow R590-186-4(5).

R590-186-6. Agent License and Renewal.

(1) Bail bond surety companies and insurers are required to issue bail bonds only through licensed bail bond agents that have been contracted with and appointed by the insurer or designated by the bail bond surety company for whom they are issuing bail bonds.

(2) All persons doing business as bail bond agents must be licensed in accordance with Chapter 23 of Title 31A and applicable department rules regarding individual agent licensing. Bail bond agent licenses are individual limited line licenses. These licenses are issued for a two year period and require no licensing examination or continuing education.

(3) Individual bail bond agent licenses must be renewed at the end of the two year licensing period in accordance with Chapter 23 of Title 31A and applicable department rules regarding individual agent licensing renewal.

R590-186-7. Unprofessional Conduct.

Persons in the bail bond surety business may not engage in unprofessional conduct. For purposes of this rule, unprofessional conduct means the violation of any applicable insurance law, rule, or valid order of the commissioner, or the commission of any of the following acts by bail bond sureties, by bail bond surety agents or by bail bond enforcement agents working for bail bond sureties:

(1) having a license as a surety revoked in this or any other state;

(2) being involved in any transaction which shows unfitness to act in a fiduciary capacity or a failure to maintain the standards of fairness and honesty required of a trustee or other fiduciary;

(3) willfully misstating or negligently reporting any material fact in the initial or renewal application or procuring a misstatement in the documents supporting the initial or renewal application;

(4) being the subject of any outstanding civil judgment which would reduce the surety's net worth below the minimum required for licensure;

(5) being convicted of any felony or of any misdemeanor that involves the misappropriation of money or property, dishonesty or perjury;

(6) failing to report any collateral taken as security on any bond to the principal, indemnitor, or depositor of such collateral;

(7) failing to preserve, or to retain separately, or both, any collateral taken as security on any bond;

(8) failing to return collateral taken as security on any bond to the depositor of such collateral, or the depositor's designee, within ten business days of having been notified of the exoneration

of the bond and upon payment of all fees owed to the bail bond agent, whichever is later;

(9) failing to advise the insurance commissioner of any change that has reduced the surety's net worth below the minimum required for licensure;

(10) using a relationship with any person employed by a jail facility or incarcerated in a jail facility to obtain referrals;

(11) offering consideration or gratuities to jail personnel or peace officers or inmates under any circumstances which would permit the inference that said consideration was offered to induce bonding referrals or recommendations;

(12) failing to deliver to the incarcerated person, or the person arranging bail on behalf of the incarcerated person, prior to the time the incarcerated person is released from jail, a one page disclosure form which at a minimum includes:

(a) the amount of the bail;

(b) the amount of the surety's fee, including bail bond premium, preparation fees, and credit transaction fees;

(c) the additional collateral, if any, that will be held by the surety;

(d) the incarcerated person's obligations to the surety and the court;

(e) the conditions upon which the bond may be revoked;

(f) any additional charges or interest that may accrue;

(g) any co-signors or indemnitors that will be required; and

(h) the conditions under which the bond may be exonerated and the collateral returned.

(13) using an unlicensed bail bond agent or unlicensed bail bond enforcement agent;

(14) using a bail bond agent not contracted and appointed by the bail bond surety company;

(15) charging excessive or unauthorized premiums, excessive fees or other unauthorized charges;

(16) requiring unreasonable collateral security;

(17) failing to provide an itemized statement of all expenses deducted from collateral, if any;

(18) requiring as a condition of his executing a bail bond that the principal agree to engage the services of a specified attorney;

(19) preparing or issuing fraudulent or forged bonds or power of attorney;

(20) signing, executing, or issuing bonds by an unlicensed person;

(21) executing bond without countersignature by a licensed agent at time of issue;

(22) failing to account for and to pay any premiums held by the licensee in a fiduciary capacity to the bail bond surety company, bail bond surety insurer or other person who is entitled to receive them;

(23) knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, or injunction in the course of a business regulated under this chapter;

(24) conviction of felony involving illegally using, carrying, or possessing a dangerous weapon;

(25) conviction of any act of personal violence or force against any person or conviction of threatening to commit any act of personal violence or force against any person, including but not limited to violent felonies as defined under Utah Code Annotated Section 76-3-203.5;

(26) soliciting sexual favors as a condition of obtaining, maintaining, or exonerating bail bond, regardless of the identity of the person who performs the favors;

(27) acting as an unlicensed bail bond enforcement agent;

(28) failing to comply with the provisions of the Utah statutes and rules regulating the bail bond surety business or order of the insurance commissioner, including outstanding judgments; and

(29) using deceptive or intimidating practices in which to gain bail bond business.

R590-186-8. Investigating Unprofessional Conduct.

The Board or the commissioner shall investigate allegations of unprofessional conduct on the part of any bail bond surety, bail bond surety agent, or bail bond producer. Complaints alleging unprofessional conduct shall be submitted in writing to the Department of Insurance.

(1) Investigations shall be completed in the following manner:

(a) Upon receipt of a complaint of unprofessional conduct, the commissioner shall provide a copy of the complaint to the person against whom the complaint was made, and, if warranted, to the person's surety. The commissioner may edit the copy of the complaint mailed under this subsection as may be necessary to protect the identity or interests of the person making the complaint if the complainant so requests.

(b) The subject of the complaint shall provide to the commissioner a written response to the complaint within 15 days of the date the complaint was mailed to respondent.

(c) At the next meeting of the Board, the commissioner shall present the complaint and the action undertaken by the Department to receive comment from the Board.

(d) After the investigation is completed, the commissioner shall present the findings and recommended disposition to the Board. The Board may concur with the commissioner's recommended disposition, recommend a different disposition, or request additional investigation.

(i) Disclosures made to the Board under Sections (c) and (d) shall be treated as confidential. Board members may not disclose or act upon any confidential information obtained pursuant to investigations conducted under this Section.

(ii) If the Board requests additional investigation, the commissioner shall reasonably conduct additional investigation in compliance with the policies and procedures of the Department.

(a) The commissioner shall present findings to the Board at the next scheduled board meeting, or at a meeting no sooner than 30 days after the Board's request, at the discretion of the Board.

(b) Upon hearing the results of any additional investigation by the commissioner, the Board shall provide to the commissioner its recommendation within 30 days.

R590-186-9. Bonding Limits.

(1) An insurance bondsman may not maintain outstanding bail bond obligations in excess of the amount allowed by the insurance company.

(2) A letter of credit bondsman and/or a property bondsman may not maintain outstanding bail bond obligations in excess of the amounts provided in the table below:

TABLE

Financial Requirements	Ratio of Outstanding Bond Obligations to Letter of Credit or Net Worth and Liquidity Amounts
\$250,000 line of credit or net worth/\$50,000 liquidity)	licensed 0 to 36 months: 5 to 1 licensed over 36 months: 5 to 1
300,000 or more line of credit limit or net worth/ at least \$100,000 liquidity	licensed 0 to 36 months: 5 to 1 licensed over 36 months: 10 to 1

(3) The commissioner may reduce the bonding limit of a letter of credit or a property bail bond company who has qualified for the 10 to 1 ratio if that bail bond company's line of credit limit or net worth or liquidity limit falls below the limits stated in Subsection(2) above.

R590-186-10. Publication of Licensed Bail Bond Surety Companies.

On or before September 1 of each year, the Board shall publish a list of bail bond surety companies licensed to do business in the State of Utah.

R590-186-11. Definition.

In reference to subsection 31A-35-701(5) "members of their immediate families" shall be defined as: spouse, children, stepchildren, children-in-law, mother, father, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, step-mother, step-father, step-brother, step-sister, half-brother, and half-sister.

R590-186-12. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

R590-186-13. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date. Non-revised provisions are enforceable as of the effective date.

R590-186-14. Severability.

If any provision or clause of this rule or its application to

any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this and the provisions of this rule are declared to be severable.

KEY: insurance

Date of Enactment or Last Substantive Amendment: March 26, 2014

Notice of Continuation: July 12, 2013

**Authorizing, and Implemented or Interpreted Law: 31A-35-104;
31A-35-301; 31A-35-401; 31A-35-406**